

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. RICHARD C. WESLEY,
Circuit Judges.

Yongjing Lin,
Petitioner,

-v.-

No. 05-4678-ag
NAC

Immigration and Naturalization Services,
Respondent.

FOR PETITIONER: Yongjing Lin, pro se, New York, New York.

FOR RESPONDENT: Leura G. Canary, United States Attorney for the Middle District of Alabama, Stephen M. Doyle, Assistant United States Attorney, Montgomery, Alabama.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Yonjing Lin, pro se, petitions for review of the BIA’s August 2005 decision affirming
2 Immigration Judge (“IJ”) Sarah M. Burr’s denial of his application for asylum, withholding of
3 removal and relief under Article 3 of the Convention Against Torture (“CAT”). We assume the
4 parties’ familiarity with the underlying facts and procedural history of the case.

5 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
6 opinion, *see* 8 C.F.R. § 1003.1(e)(4), we review the IJ’s decision as the final agency
7 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
8 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). We review the agency’s factual findings,
9 including adverse credibility determinations, under the substantial evidence standard, treating
10 them as “conclusive unless any reasonable adjudicator would be compelled to conclude to the
11 contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d
12 Cir. 2004). Nevertheless, “the fact that the [agency] has relied primarily on credibility grounds in
13 dismissing an asylum application cannot insulate the decision from review.” *Ramsameachire v.*
14 *Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). An adverse credibility determination must be based
15 on “specific, cogent reasons” that “bear a legitimate nexus” to the finding. *Secaida-Rosales v.*
16 *INS*, 331 F.3d 297, 307 (2d Cir. 2003).

17 Here, substantial evidence supports the IJ’s adverse credibility determination. Lin
18 testified that he and his wife hid from the government after they discovered her pregnancy, but
19 he admitted that his wife received extensive prenatal and postnatal care at a government hospital.
20 The medical documents provided by Lin indicate that his wife was (1) first treated by a
21 government physician in November 2001, (2) treated an additional eleven more times in the six
22 months before she gave birth, and (3) given puerperal treatment seven times in the six months
23 after she gave birth.

1 In addition, substantial evidence supports the IJ's finding that Lin's alleged fear of
2 sterilization was implausible. Background materials provided by Lin and the State Department
3 Profile indicate that an unauthorized first birth was punishable by a fine and possible IUD
4 insertion, but not sterilization. Thus, Lin provided a document containing the rules of his local
5 family planning office, which indicated that "[t]he person who has Earlier birth is required to pay
6 the fee of unplanned birth," and that local citizens are asked to "[h]ave the IUD insertion surgery
7 after bearing one child, [and] have the sterilization surgery after bearing two children."
8 (emphasis added.) Finally, the IJ's conclusion is further supported by Lin's claim that he was
9 fined 15,000 Renmenbi, which his parents had already paid.

10
11 For the foregoing reasons the petition for review is DENIED. Having completed our
12 review, any stay of removal that the Court previously granted in this petition is VACATED, and
13 any pending motion for a stay of removal in this petition is DENIED. Any pending request for
14 oral arguments in his case is DENIED in accordance with Federal Rule of Appellate Procedure
15 34(a)(2), Second Circuit Local Rule 34(d)(1).

16
17
18
19 FOR THE COURT:
20 Roseann B. MacKechnie, Clerk

21 By: _____
22